IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 228 of 1980

to

SECOND APPEAL No 234 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANALAL KALIDAS BHATT,D/D BY HEIRS-JAYABEN NANALAL W/D

Versus

DIGVIJAY TILES AND POTTERIES LTD.

Appearance:

MR MANOJ N POPAT for Appellants No. 1-5

MR KS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 04/10/2002

COMMON ORAL JUDGEMENT

1. These seven appeals under Section 100 of the Civil Procedure Code are directed against the common judgment and decree dated 30th April, 1980 passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeals No.36 to 42 of 1978 whereby the learned Judge allowed the said appeals and set aside the judgment and decree dated 27th April, 1978 by the learned Civil Judge (S.D.), Jamnagar in Regular Civil Suits No.187 to 193 of 1972 and decreed the said suits in favour of the plaintiff.

2. The respondent - plaintiff had filed the said suits for possession of the suit properties pleading that they were staff quarters allotted to the employees and the defendants in all the suits occupied the same in the pottery premises since they were in the employment of the plaintiff. The plaintiff's case was that the defendants were the licensees and no rent or any amount was collected from them. According to the plaintiff, the factory was closed down on 31st January, 1964 and the defendants in all the cases were relieved from the job. The defendants had no right to reside in the premises and were liable to vacate the premises. The plaintiff contended that the defendants were not the tenants in the suit premises but even if they were taken as tenants in the premises, they were liable to be evicted under Section 13(1)(f) of the Bombay Rent Act. Since the defendants had not vacated the premises though they were asked to do so, the plaintiff had filed the suits.

3. The appellants who were the defendants in the suits contested the suits by filing their written statements. They contended that the plaintiff had no right over the suit lands and the premises were not owned by the plaintiff. The defendants pleaded that they were in possession of the suit properties since last 30 to 40 years and had become owners even by adverse possession. They pleaded that the plaintiff had no authority to file the suits and prayed that the suits be dismissed. The Trial Court framed issues and, by consent of all the parties, recorded evidence in Regular Civil Suit No.187 of 1972 and, by common judgment, held that the plaintiff had failed to prove his title. The Trial Court, however, negatived the defendants' claim of ownership by adverse possession.

4. The respondent filed appeals against the judgment and decree of the Trial Court. At the hearing before the learned Assistant Judge, the plea of tenancy and applicability of Section 13(1)(f) of the Bombay Rent Act

were not pressed and the appeals were heard only on the point of the defendants being the licensees in the suit premises.

5. The learned Assistant Judge negatived the plea of adverse possession set up by the defendants. Then, he referred to the lease deed (Exh.101) and after comparing the map of the suit property drawn by the Court Commissioner (Exh.44) with the map produced at Mark Exh.50/3 which was part of the lease deed, came to the conclusion that the suit premises were situated within the limits of the properties taken on lease by the plaintiff. It was contended on behalf of the defendants that the Municipality which had executed a lease deed (Exh.101) in favour of the plaintiff had no authority to do so because in the litigation between the Municipality and the Government, the lands were held to be of the ownership of the Government in 1973. However, the learned Judge observed that no contention seemed to have been raised before the Trial Court about the admissibility of the document and apart from that Exh.101 was only renewed and the original lease of the property was made by the Government, as was evident from Exhs.63 and 64. He also held that even if the title of the plaintiff was taken as defective, the defendants cannot claim any advantage thereof in view of the evidence which was discussed subsequently in the judgment of the Appellate Court and which showed that the defendants had admitted the plaintiff's title over the suit properties and they were estopped from denying the title. The learned Assistant Judge referred to Exh.69 which was the form filled in by the plaintiff and submitted to the Municipality for assessment of the education cess tax. It was dated 9th March, 1964 and it was produced from the Municipality records. In the said form, there is a clear recital that the residential quarters had existed over the leased property and some of them were given to the labourers for their residence. The learned Assistant Judge also referred to the location and situation of the premises and observed that the premises were in the shape of a chawl and if the persons intended to build their own house on the Government kharaba lands, they would not ordinarily choose to keep their walls joint with the adjoining owners. He also referred to Exhs.57, 59 and 60 which were the settlements of accounts signed by the defendants in Civil Suits No.187 of 1992, 191 of 1972 and 193 of 1972. In the said writings, the three defendants had admitted the ownership of the suit premises to be that of the plaintiff and had agreed to hand over vacant possession of the suit premises by a particular date. Though the defendants disowned these writings, the

learned Assistant Judge, on appreciation of evidence, came to the conclusion that the three defendants had admitted the plaintiff's ownership of the suit premises. The learned Assistant Judge also referred to Exh.73 which was the copy of the compromise between the Pottery Labour Union and Management. In the said compromise, there was a specific mention that the defendants in Civil Suits No.188/1972, 190/1972 and 191/1972 were occupying the premises of the Pottery and it was agreed that they would vacate the same before 30th April, 1966. In para 30 of the judgment, the learned Assistant Judge held that the evidence on record under the circumstances is sufficient to hold that the suit premises fall within the leasehold properties of the plaintiff and the plaintiff is the lawful occupant. He held that the defendants had failed to prove that the suit premises belong to them. He, therefore, held in para 33 of the judgment that enough evidence existed to hold that the plaintiff was the lawful possessor of the properties and that the defendants have failed to make out their claim for possession, in any capacity as licensee or trespasser, and they were liable to be evicted. The learned Assistant Judge, therefore, allowed the appeals and decreed the suits in favour of the respondent plaintiff.

6. The original defendants have, therefore, filed these appeals against the said judgment and decree of the learned Assistant Judge. At the time of admission, the following substantial questions of law were formulated:-

(1) Whether in the facts and circumstances of the case, the Lower Appellate Court was right in holding that the plaintiff was the owner of the suit property?

(2) Whether in the facts and circumstances of the case, the Lower Appellate Court was right in holding that the defendants were licensees of the suit land?

(3) Whether in the facts and circumstances of the case, the Lower Appellate Court has committed an error of law in ignoring the fact that the Government was held to be the owner of the suit land?

(4) Whether in the facts and circumstances of the case, the Lower Appellate Court was right in holding that the defendants were estopped from challenging the title of the plaintiff?

7. Shri Manoj Popat, the learned counsel for the appellants submitted that the learned Assistant Judge had wrongly cast the burden of proof on the defendants. He then contended that Shri K.P. Thakor was not authorised to sign the statement on behalf of the defendants. He argued that the learned Judge had erred in comparing the signature of the defendants with the admitted signature on record by resorting to the provisions of Section 73 of the Evidence Act. He submitted that it was the Government who was the owner of the lands and that the defendants had constructed the structures in 1942 and they had been staying there since then. As stated earlier, it appears that there was litigation between the Municipality and the Government about the ownership of the lands and, in 1973, the land was held to be of the ownership of the Government. It is stated at the bar that the respondents have now purchased the lands from the Government in August, 1995. The learned counsel for the appellants, therefore, contended that the respondent - plaintiff had come to the court with the case that the lands belong to them but on the date of the suit, the lands did not belong to them and, hence, no decree can be passed in their favour in the present proceedings. However, the learned Assistant Judge has found that structures were on the lands which the Municipality had given on lease to the respondent and even if subsequently it was held that the Municipality was not the owner of the lands, the defect in the title of the lands cannot help the defendants if it is found that the rooms on the lands were built by the plaintiff.

8. The learned Assistant Judge, on appreciation of the evidence, has held that the rooms belong to the plaintiff. The learned Assistant Judge was entitled to compare the disputed signatures of the defendants with the admitted signatures exercising his powers under Section 73 of the Evidence Act. The settlements of accounts (Exhs.57, 59 and 60) alleged to have been signed by the defendants were admitted in evidence during the course of the trial and so was the settlement signed by the Union representative Shri K.P. Thakor (Exh.73). The learned Assistant Judge was, therefore, entitled to take them into consideration and attach to them whatever evidentiary value he thought fit. If at all there is any error, it is in realm of appreciation of evidence but the findings of fact arrived at by the learned Assistant Judge are based on his appreciation of evidence and no substantial question of law, as formulated at the time of admission, arises. There is no scope for interference in Second Appeal with the findings of fact recorded by the

learned Assistant Judge.

9. The result is that the appeals fail and are dismissed. No order as to costs.

10. The learned counsel for the appellants states that the decree of eviction was stayed during the pendency of the appeal and prays that the stay may be continued for some time in order to enable the appellants to approach the Supreme Court. The learned counsel for the respondent opposes the prayer. Stay of the decree of eviction shall continue for a period of four weeks.

(M.C. Patel, J.)

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